



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 81**

**[EPA-R08-OAR-2019-0354; FRL-10003-43-Region 8]**

## **Finding of Failure to Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining that the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado nonattainment area (Denver Area) failed to attain the 2008 ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date for “Moderate” nonattainment areas. The effect of failing to attain by the attainment date is that the area will be reclassified by operation of law to “Serious” upon the effective date of this final reclassification action. Along with the reclassification, the EPA is finalizing deadlines for submittal of SIP revisions required under the new classification and implementation of related control requirements. This final action is necessary to fulfill the EPA’s statutory obligation to determine whether the Denver Area attained the NAAQS by the attainment date, and, within six months of the attainment date, to publish a document in the Federal Register identifying each area that is determined as having failed to attain and its reclassification.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under docket ID no. EPA-R08-OAR-2019-0354. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>; you may contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6563, [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our August 15, 2019 proposal, in which we proposed to determine that the Denver Area failed to attain the 2008 ozone NAAQS by the applicable attainment date.<sup>1</sup> The proposed determination was based upon complete, quality-assured, and certified ozone monitoring data that showed that, at 0.079 parts per million (ppm), the 8-hour ozone design value for the area exceeded 0.075 ppm for the period 2015–2017.<sup>2</sup> The

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<sup>1</sup> Proposed Rule and Notice of Public Hearing, Finding of Failure to Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 41674 (Aug. 15, 2019).

<sup>2</sup> *See id.*; Proposed Rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality Standards, 83 FR 56781, 56784 (Nov. 14, 2018), Docket ID no. EPA-HQ-OAR-2018-0226; and Air Quality System (AQS, <https://www.epa.gov/aqs>) data, monitor ID 08-059-0011. A design value is a statistic that describes the air quality status of a given location (i.e., air quality monitor) with respect to the NAAQS and is used to determine compliance with the standard. The design value is the 3-year average of the annual fourth highest daily maximum 8-

EPA proposed that the Denver Area would be reclassified as a Serious nonattainment area by operation of law on the effective date of a final action finding that the area failed to attain the 2008 ozone NAAQS by the applicable attainment date for Moderate areas.<sup>3</sup> For the Denver Area, we also proposed deadlines for submittal of SIP revisions and implementation of the related control requirements for the Serious nonattainment area consistent with due dates and implementation deadlines for Moderate areas across the country that failed to attain by the July 20, 2018 attainment date.<sup>4</sup>

## **II. Final Action**

The EPA held a public hearing on the proposal at the Denver regional offices on September 6, 2019 and accepted written public comments through September 16, 2019. All comments received during the public comment period, as well as pertinent comments submitted in response to the EPA's November 2018 proposal to grant the State of Colorado's request for a 1-year attainment date extension for the Denver Area (which was part of a national rulemaking concerning Moderate areas) may be found in the electronic docket for this final action. Key comments and the agency's responses are included in this section, below. A Response to Comments document including all significant comments received on the EPA's proposal and the agency's responses to those comments is in the docket for this rulemaking. To access the full set of comments received and the Response to Comments, please go to <http://www.regulations.gov>

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hour average ozone concentrations. The design value is calculated for each air quality monitor in an area, and the area's design value is the highest design value among the individual monitoring sites in the area. *See* 40 CFR part 50, appendix D—Reference Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere (Chemiluminescence Method).

<sup>3</sup> *See* CAA section 181(b)(2)(A), 42 U.S.C. § 7511(b)(2)(A).

<sup>4</sup> *See* Final Rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality Standards, 84 FR 44238 (Aug. 23, 2019).

and search for Docket No. EPA–R08–OAR–2019–0354, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*A. Determination of Failure to Attain and Reclassification*

In accordance with CAA section 181(b)(2), the EPA is finalizing its proposed determination that the Denver Area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2018.<sup>5</sup> Therefore, on the effective date of this final action, the area will be reclassified by operation of law from Moderate to Serious for the 2008 ozone NAAQS.<sup>6</sup> Once reclassified to Serious, the Denver Area will be required to attain the standard “as expeditiously as practicable” but no later than nine years after the initial designation as nonattainment, which in this case would be no later than July 20, 2021. If the area attains the 2008 ozone NAAQS before the Serious area attainment date, Colorado may request redesignation to attainment, provided the State can demonstrate that it has met the criteria under CAA section 107(d)(3)(E).<sup>7</sup>

*B. Summary of Major Comments and Responses*

The EPA received about 460 comments on its proposal to determine that the Denver Area failed to attain by the applicable attainment date and to reclassify the area to Serious nonattainment. We also received and are considering in this action 14 pertinent comments on our previous proposal to grant the State’s since-withdrawn request for an attainment date extension.<sup>8</sup> All comments received are posted in the docket for this action, and responses to all significant

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<sup>5</sup> See 42 U.S.C. § 7511(b)(2); 84 FR 41674.

<sup>6</sup> The revised classification will appear in the Federal Register at 40 CFR § 81.306.

<sup>7</sup> 42 U.S.C. § 7407(d)(3)(E). Redesignation guidance and more information about the Clean Data Policy are available at <https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp>.

<sup>8</sup> 83 FR 56781; these comments are available at docket ID no. EPA-R08-OAR-2019-0354-0011.

comments are in the Response to Comments document in the docket. Below is a summary of the major adverse comments and our responses to them.

*Comments concerning the withdrawn extension request:* Several commenters requested that the EPA reinstate the one-year attainment date extension to give the Denver Area time to attain the NAAQS. Some expressed concern that withdrawal of the one-year extension of the attainment date would not improve air quality as expeditiously as possible. One commenter pointed to a lawsuit at the Colorado Court of Appeals<sup>9</sup> and stated that the Court could possibly invalidate the withdrawal of the attainment date extension request.

*Response:* By letter dated June 4, 2018,<sup>10</sup> the Colorado Department of Public Health and Environment (CDPHE) requested an extension of the Denver Area Moderate attainment date and certified that the State of Colorado complied with all the requirements and commitments pertaining to the Denver Area Moderate ozone area SIP, in accordance with CAA section 181(a)(5)(A). On November 14, 2018, the EPA proposed in our national Determination of Attainment by the Attainment date (DAAD) action to grant a 1-year extension of the attainment date for the Denver Area.<sup>11</sup> In a letter dated March 26, 2019, Colorado Governor Jared Polis informed the EPA that the State was withdrawing its June 4, 2018, request for a one-year attainment date extension for the 2008 ozone NAAQS.<sup>12</sup> We therefore stated in our final national DAAD action that we were not taking final action on the extension but would be addressing

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<sup>9</sup> See Defend Colorado comment letter, docket ID no. EPA-R08-OAR-2019-0354-0334.

<sup>10</sup> Letter from Garrison Kaufman, Director, Air Pollution Control Division, CDPHE to Doug Benevento, "Submittal of Exceptional Events Demonstration and Request to Extend 2008 Ozone National Ambient Air Quality Standard Attainment Deadline for the Denver Metropolitan/North Front Range Nonattainment Area" (June 4, 2018), docket ID no. EPA-R08-OAR-2019-0354-0002.

<sup>11</sup> 84 FR at 56784.

<sup>12</sup> Letter from Governor Jared Polis to Doug Benevento, Regional Administrator, EPA Region 8, "Withdrawal of Colorado's Request to Extend the 2008 Ozone National Ambient Air Quality Standard Attainment Date for the Denver Metropolitan/North Front Range Nonattainment Areas" (March 26, 2019), docket ID no. EPA-R08-OAR-2019-0354-0012.

whether the Denver area attained the 2008 NAAQS by the July 20, 2018 attainment date and any associated reclassification in a separate action.<sup>13</sup> We proceeded in this fashion because the EPA interprets CAA section 181(a)(5) to require a request from a state before the EPA may consider granting a one-year attainment date extension.<sup>14</sup> Accordingly, because the Governor has withdrawn the State's request, the EPA is not taking final action to grant a one-year extension for the Denver Area, and instead is determining that the Denver Area failed to attain by the attainment date.

*Comments opposing reclassification:* Several commenters disagreed with the EPA's proposal to reclassify the Denver Area from a Moderate to a Serious nonattainment area. The commenters cited various reasons for their opposition. One asserted that but for international emissions, Colorado would comply with the applicable ozone NAAQS, while another asserted that the State's decision not to pursue a CAA section 179B international emissions demonstration was "misguided." Another commenter alleged that the Denver Area cannot attain the standard by July 20, 2021, and that reclassification would force businesses to adopt new control strategies "with no scientific evidence that such strategies will achieve any reduction in ozone." One comment focused on data, claiming that the CDPHE annual air quality data is "incomplete and materially flawed" because it does not account for international emissions and exceptional events, and that the "based on" language of section 181(b)(2) gives the EPA the discretion to consider factors other than the air quality data submitted by the state. The commenter asked the EPA to reopen the public comment period so that it can "more fully evaluate the impact of international emissions and exceptional events on ozone concentrations in

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<sup>13</sup> 84 FR at 44242.

<sup>14</sup> *See id.*

Colorado.” Also, the commenter urged the EPA to propose a new rule finding that the Denver Area attained the 2008 ozone NAAQS.

*Response:* Detailed responses to the above comments are in the Response to Comments document in the docket for this action. A summary of those responses follows. The EPA has a mandatory duty under CAA section 181(b)(2) to determine whether the Denver area attained by its July 20, 2018 attainment date based on the area’s design value as of the attainment date. The area’s 2015-2017 design value of 0.079 parts per million is based on certified, quality-assured air quality monitoring data. None of the air quality considerations raised by commenters permits the EPA to make a different determination of attainment for the Denver area.

With respect to the influence of international emissions on a nonattainment area, CAA section 179B(b)<sup>15</sup> specifies that “any state” that establishes to the satisfaction of the Administrator that an ozone nonattainment area in such state would have attained the ozone NAAQS “but for emissions emanating from outside the United States” is not subject to CAA requirements for reclassification upon failure to attain.<sup>16</sup> The clear statutory text of CAA section 179B(b) limits the option to make the section 179B(b) demonstration to the state with jurisdiction over the relevant ozone nonattainment area. There is no statute or rule requiring the state to submit a 179B(b) demonstration. As noted by some of the commenters, the CAA is based on a cooperative federalism structure, and in that structure, Congress reserved for each state the discretion, based on its expertise and judgment, whether to seek relief under CAA section 179B(b). The EPA has no authority to require the state to make a different decision, nor may any

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<sup>15</sup> 42 U.S.C. § 7509a(b). Section 179B(a) is not relevant to this action, because it concerns the approvability of attainment demonstrations, and does not apply to reclassifications. Accordingly, our discussion focuses on section 179B(b).

<sup>16</sup> The text of that section contains an erroneous reference to section 181(a)(2) instead of 181(b)(2); our response to the comment would be the same regardless of the cross-referenced section. *See* General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498, 13569 (Apr. 16, 1992).

party make such a demonstration on behalf of the state. The EPA has not received a section 179B(b) demonstration from Colorado.

As to exceptional events, an acceptable demonstration must meet requirements of the Exceptional Events Rule, promulgated at 40 CFR 50.14. Under this rule, demonstrating that an event meets these requirements begins with a state identifying monitoring data that were affected by an exceptional event and resulted in exceedances or violations of any NAAQS for purposes of a regulatory determination. Once a state identifies such data, it may choose to notify the Regional EPA office of its intent to submit an exceptional event demonstration.<sup>17</sup> If the state chooses to submit a demonstration, it flags the associated data and creates an initial event description in the EPA's Air Quality System. The state and the EPA communicate about any potential issues or deadlines that may be pertinent to the submission, and once the demonstration is finalized, the state must provide notice and opportunity for public comment. After these steps have been completed, the state submits the demonstration to the Regional EPA office for analyses and potential concurrence.

As some commenters note, the EPA previously reviewed two exceptional event demonstrations submitted as a part of Colorado's now-withdrawn request for an attainment date extension.<sup>18</sup> These demonstrations were considered in calculating the design value for the Denver Area that this action is based on. That is, the 0.079 ppm design value for the Denver Area excludes the two days covered by the previously submitted exceptional event demonstrations. While the exclusion of those two days of data qualified the Denver Area for the 1-year extension of the attainment date, the area's design value as of the attainment date exceeds the NAAQS whether or not the exceptional events days are excluded. The EPA will review any

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<sup>17</sup> 40 CFR § 50.14(a).

<sup>18</sup> See Letter from Garrison Kaufman (June 4, 2018), docket ID no. EPA-R08-OAR-2019-0354-0002.



exceptional event demonstrations that may be provided by Colorado in the future, as potentially relevant to future actions, but we have received no other demonstrations that relate to this action. As noted above, CAA section 181(b)(2)(A) requires the EPA Administrator to determine whether an area attained the 2008 ozone 8-hour NAAQS based on the area's design value as of the July 20, 2018 attainment date, which in this case was 0.079 ppm, based on data from calendar years 2015-2017.

Finally, the EPA disagrees with the assertion that section 181(b)(2) affords the agency the discretion to consider other factors besides an area's air quality design value in determining whether an area attained by its attainment date. But even if the commenters' interpretations were correct, for the reasons explained above and in the Response to Comments, it would be reasonable in this case not to exercise that discretion, and to consider only the design value.

*Comment:* Several commenters urged the EPA not to finalize reclassification of the Denver Area to Serious because it will result in "immediate and long-term damage" to the State's economy and have "immeasurable economic impacts on the business community" and elsewhere. Several commenters claimed that reclassification would result in the loss of federal highway funds.

*Response:* The CAA does not allow the EPA to consider economic impacts in assessing whether an area has attained the NAAQS by the applicable date. Instead, CAA section 181(b)(2) requires the EPA to make the determination of attainment based solely on the design value, which is derived entirely from monitored air quality data. Here, we find that the Denver Area did not attain the 2008 Ozone NAAQS by the Moderate attainment date, based on the area's 2015–2017 design value of 0.079 ppm – which unequivocally exceeds the standard of 0.075 ppm.<sup>19</sup> As

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<sup>19</sup> See 83 FR 56784.

required by CAA section 181(b)(2)(A), the determination that the Denver Area failed to attain by the attainment date results in a reclassification to Serious by operation of law.

As to loss of highway funds, the mere reclassification of an area does not automatically trigger highway sanctions or increased offset requirements under section 179(b)(1). Sanctions would only be a possibility if the EPA finds that the State has failed to submit a plan under section 110, disapproves a submission, or finds that any requirement of an approved plan is not being properly implemented, and would only be required if the State fails to remedy the deficiency within 18 months.

*Comment:* Several commenters were concerned about the need for businesses to obtain major source permits because the major source threshold drops with a Serious classification, and about the potential of an increased backlog at CDPHE for issuing permits.

*Response:* We acknowledge commenters' concerns regarding resource needs for permitting new major sources under a Serious reclassification. However, as previously discussed, CAA section 181(b)(2) sets forth the requirements for the EPA to make an attainment determination and subsequent reclassification due to failure to attain, and does not afford the agency any discretion to refrain from reclassification because of commenters' concerns about permitting. The EPA recognizes the challenges posed by a Serious classification, though, and is committed to working closely with Colorado to help them with planning requirements associated with this classification.

*C. Comments concerning Serious Area SIP Revision Submission Deadlines and Reasonably Available Control Technology (RACT) Implementation Deadlines*

The EPA received comments on the proposed Serious area deadlines for submitting SIP and RACT revisions, and on the deadlines for implementation of RACT. After full consideration of

those comments, and pursuant to CAA section 182(i), the EPA is finalizing the following SIP submission due dates and RACT implementation deadlines for Colorado. The due date for Serious area SIP revisions, including RACT measures tied to attainment for the Denver Area, will be August 3, 2020. That is also the implementation deadline for RACT measures tied to attainment. For SIP revisions for RACT measures not tied to attainment, the EPA is finalizing a due date of March 23, 2021 and an implementation deadline of July 20, 2021. All of these deadlines are consistent with deadlines finalized in the August 2019 national rulemaking that reclassified several other areas classified as Moderate to Serious for the 2008 ozone NAAQS.<sup>20</sup> August 3, 2020, is also the deadline for areas classified Moderate and higher for the 2015 ozone NAAQS to submit RACT SIP revisions.<sup>21</sup>

*Comments on August 3, 2020 deadlines:* Some commenters opposed the deadline for SIP submissions and implementation of RACT measures tied to attainment because they asserted that deadline would not provide a reasonable amount of time to evaluate control options, conduct rulemaking, and give affected sources sufficient time to implement control requirements. Several commenters said that it would not be achievable for Colorado to develop and submit a SIP by the August 3, 2020 deadline, especially because of Colorado's legislative process. These commenters preferred a period of 18 months or more, or at least the same amount of time as other reclassified areas, for Serious Area SIP submission due dates and implementation deadline for RACT measures tied to attainment. Several comments suggested that an extended deadline for SIP submittal could result in more significant emission reduction measures than a shortened

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<sup>20</sup> See 84 FR 44238.

<sup>21</sup> See Final Rule, Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements, 83 FR 62998, 63007 (Dec. 6, 2018) (setting RACT submission deadlines at "no later than 24 months after the effective date of nonattainment designation"); Final Rule, Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018) (designating areas effective August 3, 2018).

deadline. On the other hand, other comments supported the August 2, 2020 deadline based on the need to “rapidly address the pollution problem,” and one commenter claimed that the EPA’s “history of repeated delay in implementing the 2008 NAAQS further justifies EPA’s proposal to adopt the same SIP submission due dates and implementation deadlines that were finalized in EPA’s August 2019 national rulemaking.”

*Response:* CAA section 182(i) gives the Administrator the authority to adjust SIP submission due dates as necessary or appropriate to assure consistency among SIP submissions.<sup>22</sup> In interpreting “consistency among the required submissions,” the EPA is not only considering submissions for multiple ozone NAAQS that are currently being implemented, but also consistency among the various similarly situated nonattainment areas that are being reclassified. As stated in section II of the proposal’s preamble, “given the State’s commitment to addressing its Serious Area obligations, and given section 182(i)’s focus on consistency, we [find] that aligning Colorado’s deadline with the national deadlines is appropriate and necessary for achieving ‘consistency among the submissions’ of all reclassified areas across the country and supports achieving timely attainment in the Denver Area.”<sup>23</sup>

With regard to the requests for a period of 18 months or longer for submitting SIP revisions, the governor’s letter withdrawing the extension request committed to “moving aggressively forward and without delay in our efforts to reduce ground level ozone concentrations in the Denver Metro/North Front Range nonattainment area.” We will work with Colorado’s air planning agencies as they develop additional attainment plans. Furthermore, Colorado has known that revised implementation plans would be due soon after reclassification, in order to provide for expeditious attainment of the 2008 ozone NAAQS, and has had the

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<sup>22</sup> 42 U.S.C. 7511a(i).

<sup>23</sup> 84 FR at 41676.

opportunity to make progress on plan development activities before issuance of this final action. Colorado was aware of proposed Serious SIP due dates since the November 14, 2018 proposed DAAD, which is evident from the comment letter submitted by CDPHE in connection with that proceeding.<sup>24</sup> And previously, when the Denver Area was reclassified from Marginal to Moderate nonattainment,<sup>25</sup> the State only had seven months from the effective date of reclassification to submit Moderate and RACT SIPs. The Colorado Air Quality Control Commission has adopted new and revised rules in 2019 to prepare for the development and submission of a Serious SIP. Some of these include adoption of Regulation Number 21 to establish VOC content limits for consumer products and architectural and industrial maintenance coatings manufactured and/or sold in Colorado, revisions to Regulation Number 7 to minimize emissions from the oil and gas sector, and adoption of certain RACT for major sources with VOC and/or NOx emissions equal to or greater than 50 tons per year (tpy). Nonetheless, the EPA recognizes the challenges posed by these due dates and deadlines and is committed to working closely with states to help them as they prepare SIP revisions in a timely manner.

*Comment on deadline for implementing RACT measures not tied to attainment:* One commenter stated that adopting and enforcing RACT by July 20, 2021 is a significant regulatory burden, and that the legislative framework in Colorado “makes it unworkable for Colorado to meet the proposed deadlines for RACT revisions and the proposed deadlines are therefore arbitrary and capricious.” CDPHE’s comment on the November 14, 2018 proposal recommended aligning the Serious SIP submittals, including RACT, with the Moderate area SIP submittal for

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<sup>24</sup> Comment submitted by Garry Kaufman, Director, Air Pollution Control Division, CDPHE and Mike Silverstein, Executive Director, Regional Air Quality Council, docket ID no. EPA-R08-OAR-2019-0354-0011.

<sup>25</sup> Final Rule, Determinations of Attainment by the Attainment Date, Extensions of Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards, 81 FR 26697 (May 4, 2017).

the 2015 ozone standard.<sup>26</sup> Alternatively, the State asked for a period of 18 months to two years from the effective date of reclassification to submit a Serious RACT SIP. Several commenters on this action supported the time frames that CDPHE recommended.

CDPHE preferred a RACT implementation deadline of January 1, 2024, as proposed in the national notice, to allow more time for Colorado to identify, adopt, and implement measures for ozone precursor reductions. One commenter agreed with this deadline and claimed that it would be “unlikely that Colorado [could] consider any measures not already in place for sources over 100 tpy” with an implementation date of August 3, 2020. Other commenters supported the proposal to adopt the same SIP submission due dates and implementation deadlines that were finalized in the EPA’s August 2019 national rulemaking, citing to the need for national consistency under Section 182(i).

*Response:* As previously discussed, the EPA has concluded that it is appropriate under CAA section 182(i) to align the submission and implementation deadlines for RACT not needed for attainment with other areas recently reclassified to Serious for the 2008 ozone NAAQS. The deadlines that the State has requested are well beyond the Serious area attainment date, and it is self-evident that an implementation deadline beyond the attainment date cannot serve timely attainment. Also, the deadlines being finalized today best support the State’s expressed commitment to reducing ground level ozone concentrations in the Denver Area. The approach being finalized sets a later deadline for RACT implementation than for submission, which allows some time to implement RACT measures where it is possible to do so. As noted in the August 23, 2019 rulemaking, we believe that a slightly longer timeframe for measures that are not directly tied to the area’s attainment can be appropriate, especially where an area is

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<sup>26</sup> 83 FR 56781.

simultaneously implementing two ozone standards, such that additional controls will help the area attain both standards more expeditiously.

### **III. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

#### *C. Paperwork Reduction Act (PRA)*

This rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget.<sup>27</sup> This action does not contain any information collection activities and serves only to make final: (1) a determination that the Denver Area Moderate ozone nonattainment area failed to attain the 2008 NAAQS by the July 20, 2018 where such area will be reclassified to Serious nonattainment for the 2008 ozone standards by operation of law upon the effective date of the final reclassification action; and (2) establishment of adjusted due dates for SIP revisions, including RACT SIP revisions, and RACT implementation deadlines.

#### *D. Regulatory Flexibility Act (RFA)*

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<sup>27</sup> On April 30, 2018, the OMB approved the EPA's request for renewal of the previously approved information collection request (ICR). The renewed request expires on April 30, 2021, three years after the approval date (*see* OMB Control Number 2060-0695 and ICR Reference Number 201801-2060-003 for EPA ICR No. 2347.03).

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The determination of failure to attain the 2008 ozone NAAQS (and resulting reclassification) does not in and of itself create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, tribes, or the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*



The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

This action does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods.

*L. Congressional Review Act (CRA)*

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for specific entities and does not directly regulate any entities. The determination of failure to attain the 2008 ozone NAAQS (and resulting reclassification) does not in itself create any new requirements beyond what is mandated by the CAA.

*M. Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Carbon monoxide, Designations and classifications, Greenhouse gases, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 16, 2019

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Gregory Sopkin,  
Regional Administrator,  
Region 8.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 81 as follows:

**PART 81– DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

**Subpart C – Section 107 Attainment Status Designations**

2. In § 81.306, the table “Colorado—2008 8-Hour Ozone NAAQS (Primary and secondary)” is amended by revising the “Date” and “Type” entries under “Classification” for “Denver-Boulder-Greeley-Ft. Collins-Loveland, CO:<sup>2</sup>” to read as follows:

**§81.306 Colorado.**

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Colorado—2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO: <sup>2</sup>		Nonattainment	<b>[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].</b>	Serious.
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